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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

09 MAR 2000

REPLY TO THE ATTENTION OF C-14J

VIA MAGNAFAX AND OVERNIGHT MAIL

Richard F. Ricci
Lowenstein Sandler PC
65 Livingston Avenue
Roseland, New Jersey 01068-1791

Re: Access Order to Property Known as Sauget Area One Site I in
Sauget, Illinois

Dear Mr. Ricci:

Enclosed please find an Administrative Order for Access to the property known as Sauget Area One Site I located on the facility property of Cerro Copper Products Company in Sauget, Illinois. The U.S. Environmental Protection Agency ("U.S. EPA") and/or its representative (Monsanto and Solutia) plan to conduct sampling and investigation activities at the above site because the Agency has determined that the site is contributing to an actual or potential threat of exposure of hazardous substances to human health and the environment. For this reason, U.S. EPA personnel or personnel of its representative, need access to the above property.

Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA", as amended), gives the U.S. EPA and its representatives the authority to enter any property for the purpose of taking response actions to address the release or threatened release of hazardous substances, pollutants, or contaminants. Although U.S. EPA personnel may enter property without an owner's consent when entry is necessary to respond to a release or threatened release, it is U.S. EPA's practice to seek the owner's consent before entry onto the property. In this case, representatives of Monsanto and Solutia have been unable to obtain the Cerro's consent to enter its property.

Therefore, U.S. EPA is issuing to you the enclosed "Administrative Order Directing Compliance with Request for Access." Please read the Order carefully and comply with its requirements. Note that under the terms of the Order, you must

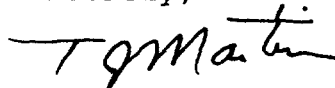
notify U.S. EPA of your intent to comply fully or not comply with the Order by close of business on Friday March 10, 2000. You may submit written comments on this Order and, per your request, a telephone conference may be held. Per its terms, the Order will become effective on Saturday March 11, 2000.

The notice of your intent to comply, as well as any comments you may have, should be sent or faxed to me at the following address or number:

Thomas J. Martin
Office of Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604
Fax: (312) 886-0747

If you have any questions, please call me at (312) 886-4273. I appreciate your immediate attention to this matter.

Sincerely,



Thomas J. Martin
Associate Regional Counsel

Enclosure

cc: Joseph Grana (via fax and overnight: w/attachment)
Cerro Copper Products Company
3000 Mississippi Ave., Sauget, IL 62206

Linda Tape (via overnight: w/attachment)
Colleen Michuda
Thompson Coburn
One Mercantile Center
St. Louis, Missouri 63101-1693

bcc

Mike McAteer (Superfund) (w/o attachment)
Leslie Kirby-Miles (w/o attachment)

IN THE MATTER OF:)
)
)
 Cerro Copper Products Company)
)
 Sauget, Illinois)
)
)

Docket No. V-W-00-C-583

ADMINISTRATIVE ORDER
DIRECTING COMPLIANCE
WITH REQUEST FOR
ACCESS

I. PREAMBLE

This Order is issued pursuant to the authority vested in the President of the United States by Section 104(e) (5) of CERCLA, and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (1987), further delegated to the Regional Administrator by U.S. EPA Delegation No. 14-6, and

further delegated to the Director of the Superfund Division by Regional Delegation 14-6.

This Order pertains to Site I, which is part of a larger Superfund site known as Sauget Area One. The Sauget Area One site is currently the subject of a separate Administrative Order by Consent (AOC) signed on January 21, 1999, by U.S. EPA and Solutia, Inc. and Monsanto Company (the "AOC respondents") requiring a detailed Remedial Investigation and Feasibility Study (RI/FS) and Engineering Evaluation/Cost Assessment (EE/CA) of the Area One site. This Order Directing Access requires Respondent Cerro Copper Products company to grant U.S. EPA and its officers, employees, duly delegated representatives, and contractors, including representatives and agents of the AOC respondents Monsanto and Solutia, entry and access to all portions of Site I located on Respondent's property for the purpose of conducting the sampling and investigation activities required by the January 21, 1999, AOC. The purpose of such sampling and investigation is to characterize the waste present in Site I and propose remedial alternatives to address the imminent and substantial endangerment to public health and the environment caused by the release or threat of release of hazardous substances from Site I.

By copy of this Order, the State of Illinois has been notified of the issuance of this Order.

II. FINDINGS OF FACT

Based upon information available on the date of issuance of this Administrative Order, the Director of the Superfund Division of U.S. EPA, Region 5, makes the following findings of fact:

1. The Site, labeled as "Site I" on the attached map, is located at Sauget, Illinois. Site I is located on Cerro property north of Queeny Avenue, west of Falling Springs Road and south of the Alton & Southern Railroad. It occupies approximately 19 acres of land. Creek Segment A (CS-A) of Dead Creek borders Site I on the Site's western side. The Site is currently graded and covered with crushed stone and used for equipment and truck parking.

2. The Sauget Area One Site has been proposed by U.S. EPA for inclusion on the CERCLA National Priorities List (NPL) of Superfund Sites. The Sauget Area One site is currently subject to a CERCLA Section 106 AOC signed on January 21, 1999, by U.S. EPA and Solutia and Monsanto. That AOC requires Solutia and Monsanto to investigate and sample for the presence of hazardous substances on the Area One site and to propose appropriate measures to remediate the contamination found. Site I is part of

the larger Sauget Area One site. Access to Site I is required to conduct the sampling and investigation required by the January 21, 1999, AOC.

3. The source areas for Sauget Area One consist of six known disposal areas adjacent to, or in close proximity of, Dead Creek. The six disposal areas are known as Sites I, H, G, L, M and N. Site I was originally used as a sand and gravel pit which received industrial and municipal wastes. Site I is connected to Site H under Queeny Avenue and together they were known to be part of the "Sauget-Monsanto Landfill." The landfill operated from approximately 1931 to 1957. On information and belief, wastes from Site I leached and/or were released into CS-A and available downstream creek segments until CS-A was remediated in 1990. On information and belief, Site I served as a disposal area for contaminated sediments from historic dredgings of Dead Creek Segment A.

4. Information on the types of wastes disposed of and the types and levels of contamination found at the Sauget Area One sites, including Site I, have been provided to U.S. EPA from various sources including, but not exclusively from: 1) CERCLA 103(c) Submittals; 2) CERCLA 104(e) Responses; 3) Expanded Site Investigation Dead Creek Project Sites (E&E, 1988), 4) Removal

Action Plan for Dead Creek Sites (Weston-SPER, 1987); 5) Description of Current Situation at the Dead Creek Project Sites (E&E, 1986); 6) Site Investigations for Dead Creek Sector B and Sites L and M (Geraghty & Miller, Inc. 1992); 7) Site Investigation/Feasibility Study for Creek Segment A (Advent Group, 1990), 8) Preliminary Ecological Risk Assessment for Sauget Area 1, Creek Segment F (E&E 1997); 9) EPA Removal Action Report for Site G (E&E 1994); 10) Area One Screening Site Inspection Report; and 11) Site Investigation Feasibility Study for Creek Segment A (Advent Group 1990).

5. On information and belief, Site I site accepted chemical wastes from approximately 1931 to the late 1950's. Municipal wastes were also disposed of in Site I. Site I contains approximately 250,000 cubic yards of contaminated wastes and fill material. No subsurface containment is in place beneath Site I. Soil samples collected from Site I have revealed elevated levels of volatile organic compounds (VOCs) such as 1,1,1-trichloroethane (1,692 ppb), trichloroethene (3,810 ppb), benzene (24,130 ppb), tetrachloroethene (5,265 ppb), toluene (77,910 ppb), chlorobenzene (126,900 ppb), ethyl benzene (15,070 ppb), and total xylenes (19,180 ppb). Soil samples also revealed elevated levels of semi-volatile organic compounds (SVOCs) such

as 1,3-dichlorobenzene (70,140 ppb), 1,4-dichlorobenzene (1,837,000 ppb), 1,2-dichlorobenzene (324,000 ppb), naphthalene (514,500 ppb), and hexachlorobenzene (1,270,000 ppb). Soil samples also revealed elevated levels of polychlorinated biphenyls (PCBs), such as arochlor 1260 (342,900 ppb), and the pesticides 4,4-DDD (29,694 ppb), 4,4-DDT (4,305 ppb) and toxaphene (492,800 ppb). Elevated levels of metals were also found in soils, such as beryllium (1,530 ppm), copper (630 ppm), lead (23,333 ppm), zinc (6,329 ppm) and cyanide (3,183 ppm). Groundwater samples collected from beneath Site I have revealed elevated levels of VOCs such as vinyl chloride (790 ppb), trichloroethene (279 ppb), benzene (1,400 ppb), tetrachloroethene (470 ppb), toluene (740 ppb), and chlorobenzene (3,100 ppb). Elevated levels of SVOCs were also detected in groundwater, such as phenol (1,800 ppb), bis-(2-chloroethoxy)methane (2,900 ppb), 1,2,4-trichlorobenzene (2,700 ppb), 4-chloroaniline (9,600 ppb), and pentachlorophenol (2,400 ppb).

6. The January 21, 1999, AOC signed by U.S. EPA, Monsanto and Solutia cites the following U.S. EPA findings constituting an imminent and substantial threat to public health, welfare and the environment at the site:

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the presence of elevated levels of contaminants, including VOCs, SVOCs, PCBs, dioxins, pesticides, and metals, in the surface soils, sediments and surface water of the disposal areas of the Site (i.e., Sites I, H, G, L, M, and N) and in all segments of Dead Creek (CS-A through CS-F).

b. actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the presence of elevated levels of contaminants, including VOCs, SVOCs, and metals, in groundwater. Although the source of drinking water for local residents is assumed to be primarily from surface water sources located upstream of the Site, many residences in the Site area continue to use private wells for domestic uses, which could include occasional uses for drinking water purposes. Further, contaminated groundwater is discharging into Dead Creek and adjacent wetland areas. Elevated levels of VOCs, SVOCs and metals have been detected in the creek water and adjacent wetland areas particularly in Creek

Segment CS-F. Dead Creek and its wetland areas contain a variety of ecosystems which may be damaged by the types of contamination found at Sauget Area 1.

c. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of elevated levels of VOCs, SVOCs, PCBs, dioxins and metals in soil at the Site.

d. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to existence of elevated levels of VOCs, SVOCs, PCBs, dioxins and metals in the sediments of Dead Creek which may be spread to surrounding residential and commercial properties during high water periods in the creek or during dry weather periods causing the sediments to become exposed and susceptible to wind action.

e. threat of fire or explosion; this factor is present at the Site due to the fact that fires have occurred on Site G as a result of incompatible materials disposed of within this Site. These fires have the ability to smolder for long periods of time and thereby release contaminants such as

PCBs, dioxins and other organics into nearby residential areas and workplaces.

7. The actual or threatened release of hazardous substances from Site I may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The January 21, 1999, AOC ordered the AOC respondents to perform, at a minimum, site sampling and investigations as necessary to complete characterization of wastes present in Area One, including Site I, and to propose remedial alternative to address the wastes found. At a minimum, the AOC respondents are required to conduct a thorough source characterization to investigate physical and chemical aspects of the source materials and the materials in which they are contained at the Site, including Site I. The characterization of these source areas is required to involve obtaining data relative to type, concentration and quantity of the waste materials present at each source area. Under the AOC, source characterization techniques will include, but are not limited to, surface/subsurface soil sampling, soil gas sampling, geophysical investigations, the construction of test pits (trenches) and surface water sampling. In addition, the AOC requires the AOC respondents to conduct a

hydrogeologic investigation to further evaluate the subsurface geology and characteristics of the water bearing formations at and around the Site. The results of this study will be employed with existing site data and the results of the source characterization to define groundwater flow patterns and the vertical and lateral extent of contaminant migration.

9. Despite several attempts over the course of the last 4 months to negotiate the terms of an acceptable access agreement with the Respondent, the AOC respondents have been unable to acquire Respondent's voluntary consent for access to its property to conduct work required by the AOC.

III. DETERMINATIONS OF LAW

Based upon information available on the date of issuance of this Administrative Order, the Superfund Division Director of U.S. EPA, Region 5, makes the following Determinations of Law:

1. Sauget Area One Site I is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. The contaminants in Area One Site I, including but not limited to those listed in paragraph II. 5. of this Order Directing Access, are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and as specified in 40 C.F.R. § 302.4.

3. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. Respondent is the present "owner" of Area One Site I, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The presence of hazardous substances at the facility or the past, present or potential migration of hazardous substances currently located at or emanating from the facility constitutes a reasonable basis to believe that there may be a "release" or substantial threat of "release," as defined in Section 101(22) of CERCLA, into the environment of a hazardous substance from or at the facility.

6. Access to the Respondent's property is necessary to effectuate a response action, including performing the sampling and analysis necessary to conduct the RI/FS required by the January 21, 1999, AOC.

IV. ORDER

Based upon the foregoing Findings of Fact and Determinations of Law, it is hereby ordered that Respondent comply with U.S. EPA's request for access to the Respondent's property described in Paragraph 1 of the Findings of Fact, above, pursuant to

Section 104(e) of CERCLA, in accordance with Paragraphs 1 through 5 below:

1. As required by section 104(e)(3) of CERCLA, Respondent shall grant the U.S. EPA and its officers, employees, duly designated representatives, and contractors, including but not limited to employees, agents or contractors of Monsanto and Solutia, access to the Site for the purpose of conducting the sampling activities required by the January 21, 1999 AOC, as follows:

a. On March 11 and March 12, 2000, at all reasonable times, Respondent shall allow entry to Site I on its property for sampling and investigation activities described in paragraph II. 8. above.

b. In the alternative, if in the AOC respondents' discretion sampling cannot be conducted on March 11 and 12, Respondent shall allow entry to Site I on its property on March 18 and 19, 2000 (or an alternate subsequent weekend thereafter upon 5 days notice to the Respondent), at all reasonable times, for sampling and investigation activities described in paragraph II. 8. above.

2. This Administrative Order shall be binding on all employees, agents, successors and assigns of Respondent. In the

event of any conveyance by Respondent, or Respondent's agents, heirs, successors and assigns, of any interest in any property which includes an access area, Respondent or Respondent's agents, heirs, successors and assigns, shall convey the interest so as to ensure continued access by U.S. EPA and/or its representatives for purposes of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of such property so that use will not interfere with activities undertaken pursuant to this Order. Respondent, or Respondent's agents, heirs, successors and assigns, shall notify U.S. EPA at least (30) thirty days before any such conveyance of an interest in property where an access area is located, and shall notify the other parties involved in the conveyance prior to the transfer of the provisions in this Order.

3. Any action taken by Respondent to deny access to U.S. EPA and its officers, employees, duly designated representatives, and contractors, for the purpose of performing actions described in paragraph II. 8. above, or any attempt to interfere with the actions deemed necessary to complete these actions, shall be deemed a violation of this Administrative Order.

4. Nothing in this Order is meant to limit in any way any right of access to this property which U.S. EPA, the State of

Illinois, and/or local governmental agencies, may have under any statute, regulation or agreement.

V. CONFIDENTIAL BUSINESS INFORMATION

Respondent is hereby advised that, consistent with 18 U.S.C. § 1905, it may assert a confidentiality claim with respect to any information obtained by U.S. EPA in the course of activities performed on its property under the authority of this Administrative Order. Information accorded protection by 18 U.S.C. § 1905 includes information relating to or concerning trade secrets, processes, operations, style of work, or apparatus, confidential statistical data, or to the identity, amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation or association. Any such claim will be handled by U.S. EPA in accordance with the Confidential Business Information regulations, found at 40 C.F.R. § 2.201 et seq.

VI. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the above Findings and Determinations is available for review by appointment on weekdays between the hours of 9:00 a.m. and 5:00 p.m. in the Office of Regional Counsel, U.S. EPA, Region 5. Please contact Thomas

Martin, Associate Regional Counsel, at (312) 886-4273 to make an appointment to review the Administrative Record.

VII. EFFECTIVE DATE OF ORDER AND OPPORTUNITY TO CONFER

1. This Order shall become effective on Saturday, March 11, 2000.

2. Respondent may request a conference with U.S. EPA to discuss this Order. The conference may be held by telephone. Respondent may appear by an attorney or other representative. Any such conference shall take place by close of business Friday, March 10, 2000. Respondent should contact Thomas Martin, Associate Regional Counsel, at (312) 886-4273 to arrange such a conference.

3. Any comments that Respondent may have regarding this Order, its applicability to Respondent, the correctness of any factual determination upon which the Order is based, or any other relevant and material issue may be reduced to writing and submitted to U.S. EPA by close of business Friday, March 10, 2000. Any such comments should be sent via fax to Thomas Martin, Office of Regional Counsel (MAIL CODE C-14J), U.S. EPA -Region 5, 77 West Jackson Street, Chicago, Illinois 60604 at (312) 886-0747.

VIII. NOTICE OF INTENTION TO COMPLY

Whether or not Respondent requests a conference with U.S. EPA, Respondent must notify U.S. EPA within by close of business Friday, March 10, 2000 of its intent to comply fully or not comply with the Order. Respondent shall provide written notice to U.S. EPA stating whether it intends to comply with the terms hereof. Such notice shall be sent via fax (312-886-0740) and by overnight carrier, return receipt requested, to Thomas Martin, Office of Regional Counsel (C-14J), U.S. EPA - Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. Failure to provide such timely notice shall be deemed to be a refusal to grant access, constituting noncompliance with the terms of the Order.

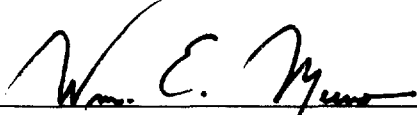
IX. PENALTIES FOR NONCOMPLIANCE

Respondent is hereby advised that, pursuant to Section 104(e)(5)(B) of CERCLA, a Court may assess a civil penalty not to exceed \$27,500 per day for each day that a Respondent unreasonably fails to comply with this Order or any part hereof.

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IT IS SO ORDERED this 8th day of March, 2000.

By:


William E. Muno, Director
Superfund Division
United States Environmental
Protection Agency
Region 5

ATTACHMENTS:

1. Map of Site
2. Administrative Record Index

ADMINISTRATIVE RECORD

- a. ATSDR Health Report dated August 24, 1994
- b. Expanded Site Investigation Dead Creek Project Sites (E & E, 1988)
- c. Removal Action Plan for Dead Creek Sites (Weston-SPER, 1987)
- d. Description of Current Situation at the Dead Creek Project Sites (E & E, 1986)
- e. Site Investigations for Dead Creek Sector B and Sites L and M (Geraghty & Miller, Inc. 1992)
- f. Preliminary Ecological Risk Assessment for Sauget Area 1, Creek Segment F (E & E, 1997)
- g. Sauget Area 1 and 2 Sites - Data Tables/Maps (E & E, 1998)
- h. Area 1 Screening Site Inspection Report
- i. Site Investigation/Feasibility Study for Creek Segment A (Advent Group, 1990)